Nos. 82-354, 82-355 and 82-398

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., *et al.* and CONSUMER ALERT and PACIFIC LEGAL FOUNDATION and UNITED STATES DEPARTMENT OF TRANSPORTATION, *et al.*,

Petitioners,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE CO., *et al.* and NATIONAL ASSOCIATION OF INDEPENDENT INSURERS, *et al.*,

Respondents.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

APPENDIX TO BRIEF FOR RESPONDENTS NATIONAL ASSOCIATION OF INDEPENDENT INSURERS, AUTOMOBILE OWNERS ACTION COUNCIL AND EUGENE J. MEYUNG

RAYMOND J. RASENBERGER*
LAWRENCE C. MERTHAN
FRANK J. COSTELLO
JERRY W. COX
ZUCKERT, SCOUTT, RASENBERGER & DELANEY
888 Seventeenth Street, N. W.
Washington, D. C. 20006
(202) 298-8660

Counsel for Respondents National Association of Independent Insurers, Automobile Owners Action Council, and Eugene J. Meyung

* Counsel of Record

Of Counsel:
LOWELL R. BECK, President
National Association of Independent Insurers

DONALD L. SCHAFFER, Senior Vice President, Secretary & General Counsel
Allstate Insurance Companies

February 7, 1983

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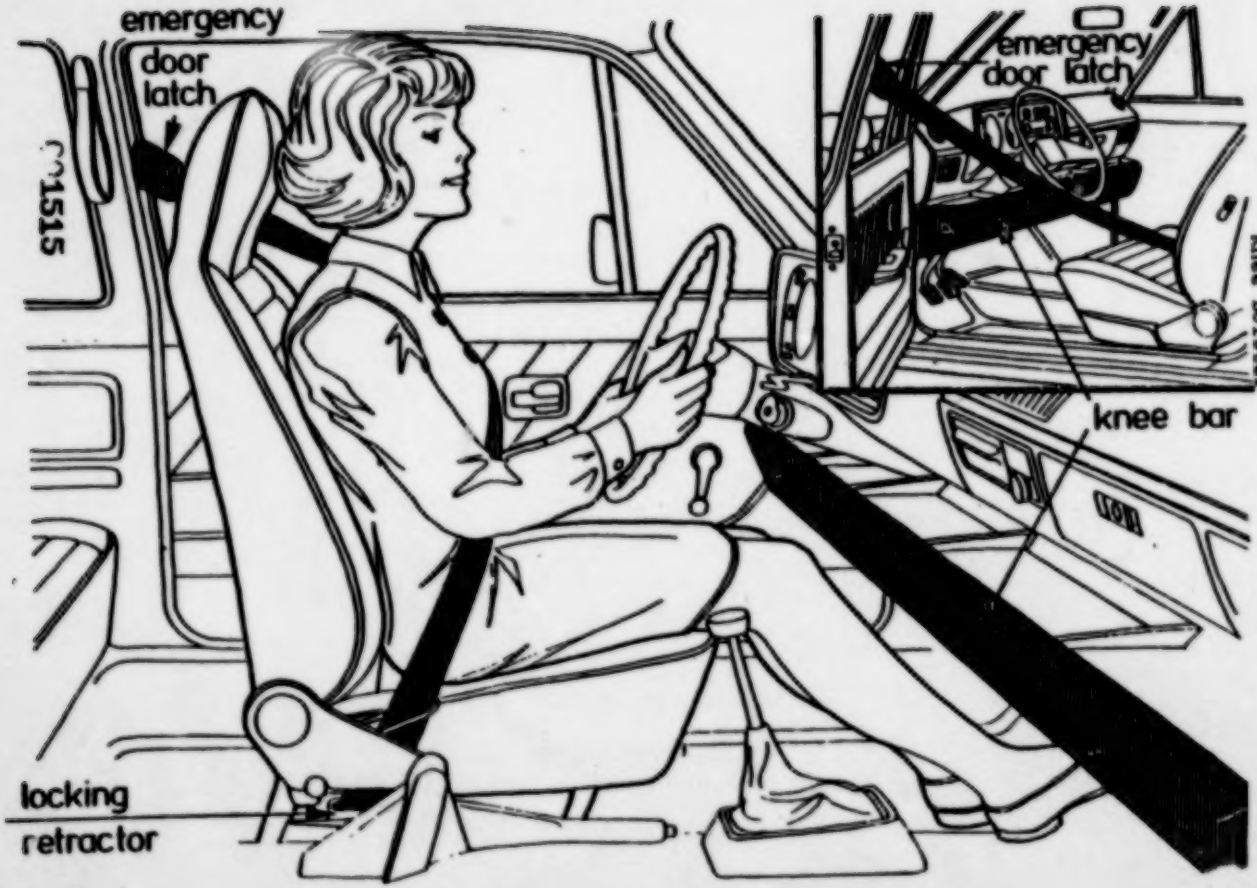


Figure 1.1. The Volkswagen Rabbit automatic restraint system.

Figure 1: Volkswagen Two Point Automatic Belt with Knee Bolster

Figure 2: 1980 Chevette Three Point Automatic Lap/Shoulder Belt (Non-Separable)

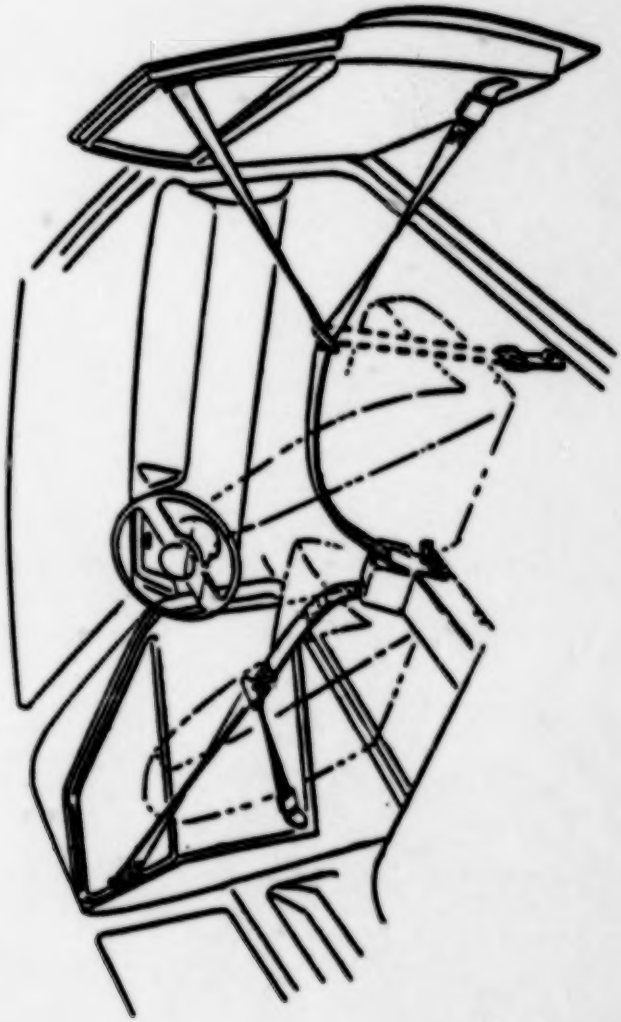
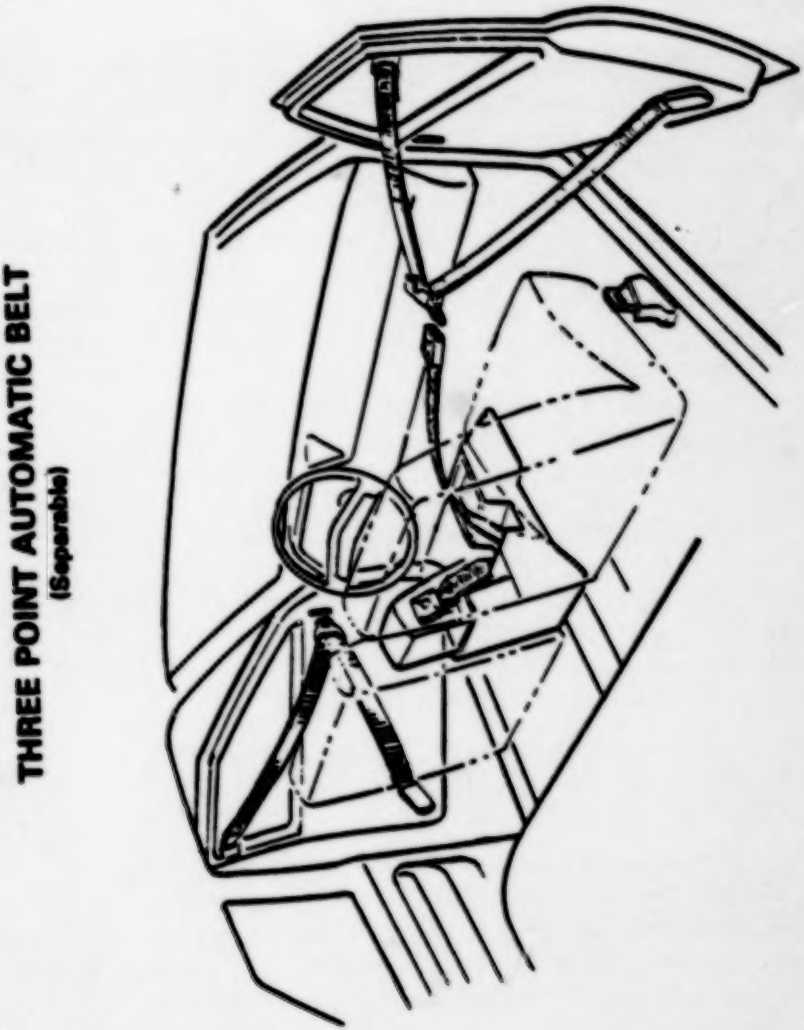


Figure 2
1980 Chevette Three Point Automatic Lap/Shoulder Belt
(Non - Separable)

Figure 3: Three Point Automatic Belt (Detachable)
(General Motors)



DEPARTMENT OF JUSTICE,

June 2, 1966.

Honorable WARREN G. MAGNUSON,
United States Senate
Washington, D.C. 20510

DEAR SENATOR MAGNUSON: At your request, the Department of Justice hereby offers its comments on the amendments to the draft bill on auto safety proposed by the automobile industry. These amendments in effect constitute a new draft bill. In the course of these comments we shall make various comparisons between this draft and S. 3005 in the form originally proposed by you. (We are commenting in a separate letter on proposed bill S. 3005.) For purposes of ready identification, in the following we shall refer to the latter as the "Administration bill" and to the amendments proposed by the industry as the "industry proposal."

A. SUMMARY OF THE INDUSTRY PROPOSAL

Under the industry proposal the Secretary would be required to establish regulations, in accordance with section 4 of the Administrative Procedure Act, making effective as a federal motor vehicle safety standard:

(1) any motor vehicle safety standard that has been adopted by the Vehicle Equipment Safety Commission (VESC), and

(2) any other motor vehicle safety standard, provided (i) he first allows such initial time (not exceeding two years from the date of enactment of the Act) as he considers reasonable for motor vehicle manufacturers to propose and for the VESC to adopt a particular motor vehicle safety standard, (ii) after determining with respect to a particular subject either that no standard exists or that existing standards or compliance therewith is inadequate, he then proposes an appropriate standard to the VESC, and (iii) the VESC fails to act upon the request within 180 days or such longer time as the Secretary specifies *or*

acts by issuing a standard which the Secretary determines is inadequate to protect the public against unreasonable risk of accidents or death or injury to persons resulting therefrom.

The Secretary would be required to follow a number of criteria enumerated in section 102(h) and to include in any order establishing safety standards findings of fact and conclusions on all relevant matters, presumably including compliance with the various criteria set forth. A standard would become effective no sooner than 180 days nor later than two years after the date on which it was issued, except that for good cause shown the Secretary might specify a later date.

The automobile manufacturers would be authorized individually or collectively to formulate and propose safety standards for consideration by the VESC and the Secretary. They would also be authorized "individually or collectively" to comply voluntarily with such a proposed standard until legally binding Federal or State standards covering the same subject matter have become effective. Joint cooperation in designing, testing, and producing motor vehicle or motor vehicle equipment for the purpose of complying with the standards proposed by them would also be authorized. However, the Act would provide that nothing therein contained should be deemed to exempt from the antitrust laws of the United States any conduct that would otherwise be unlawful under such laws.

Whereas the Administration bill would also authorize the Secretary to formulate standards to protect the public against accidents or death, injury, or *property damage* resulting therefrom, the industry proposal would provide that the authority of the Secretary to establish standards is limited to protecting the public against death and personal injury. His authority to formulate standards designed to protect the public against property damage caused by accidents would be eliminated.

Under the Administration bill it would be unlawful for any person to manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States any motor vehicle or item of motor vehicle equipment unless it is in conformity with standards

prescribed by the Secretary. However, under the industry bill it would only be an offense to "knowingly and willfully" perform one of these acts. The industry bill would also provide that sellers relying in good faith on a certificate provided by the manufacturer or importer to the effect that the vehicle or equipment is believed to conform to all applicable Federal safety standards shall not be liable under the Act. The proposed industry bill would also impose a $100,000 limitation upon the penalty which may be imposed for "any related series of violations" of the Act.

The Industry bill would also add a new requirement that before any violation of the title is reported by the Secretary to the Attorney General or any United States Attorney for institution of an injunction proceeding, the person against whom the proceeding is contemplated shall be given notice and opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding, and, except where knowing and willfull conduct is involved, such person shall also be given a reasonable opportunity to take corrective measures to achieve compliance.

A different standard for judicial review would be provided. Under the Administration bill findings of the Secretary as to facts, if supported by substantial evidence, would be conclusive. The industry proposal provides that findings of the Secretary with respect to questions of fact "shall be sustained if based upon a fair evaluation of the entire record of the proceedings on which the Secretary based his order."

There are a number of other respects in which the industry proposal differs from the Administration bill. These will be taken up in the course of our discussion of the industry bill.

The spokesman for the industry, John S. Bugas, Vice President of Fort Motor Company, sought to justify the amendments sponsored by industry in a statement before the House Committee on Interstate and Foreign Commerce on April 26, 1966, as follows:

"We urge only the adoption of reasonable amendments designed to assure state and industry participation in the

standard-setting process and to assure fair standard-setting procedures and criteria, a full opportunity for judicial review, and an enforcement system under which those who act in good faith and with due care are not punished, while the penalty for others is appropriate to the degree of blame that can be fairly charged to the person proceeded against.

"Finally, while the uncertainty of antitrust interpretations in this area continues to give us concern, we believe we can make progress within the framework of the present antitrust laws if the final bill explicitly recognizes the need for manufacturers to cooperate reasonably with one another in areas related to the limited purposes of developing and evaluating improved vehicle safety characteristics, formulating proposed minimum safety performance standards for adoption by the Federal Government and the states, and complying with those standards until legally binding standards are issued." (3-4)

In our opinion, the industry proposal suffers from at least six basic shortcomings.

First, by imposing requirements for working through the VESC the bill would in practice delay the introduction of new safety devices and leave the timing on introduction of new devices largely in the hands of the industry.

Second, it would require the Secretary to act in accordance with criteria which in some instances are unnecessary and in others are overly protective to industry interests and fail to take adequate account of the importance of rapid employment of new safety devices.

Third, the proposal might grant an implied immunity from the antitrust laws for various activities which should not be immunized from antitrust scrutiny.

Fourth, amendments relating to judicial courses of action taken by the Secretary and the procedure to be followed by the Secretary require unnecessarily cumbersome and time-consuming proceedings that can hamper the effectiveness of the standards.

Fifth, the proposal would severely narrow the category of acts prohibited by the statute and reduce the penalties to be imposed for violations.

Sixth, it would limit the power and discretion of the Secretary in a number of undesirable ways, most important of which would be elimination of his power to adopt standards to protect against property damages caused by accidents.

(1) *The Required Reference to VESC:* The industry proposal would require prior action by the VESC before the Secretary would be permitted to promulgate standards. The Secretary would be limited to establishing standards previously adopted by the VESC; or standards previously recommended by the Secretary to the VESC upon which it had failed to act; or standards after VESC had acted by adopting standards determined by the Secretary to be inadequate. Before he would even be permitted to recommend a standard on a particular subject to the VESC, the Secretary would be required to allow such initial time (not exceeding two years from the date of enactment of the Act) as he considered reasonable for motor vehicle manufacturers to propose and for the VESC to adopt a particular motor vehicle safety standard. Section 102(d),(e).

Since the Secretary would be authorized to establish other standards on a particular subject only if he determined there were no existing standards or existing standards pursuing inadequate, he might well be barred from pursuing any standard on a given subject except a standard adopted by the VESC, unless he were willing to find that the VESC standard was inadequate. Section 102(d).

In support of its proposed modification of the Administration bill to require prior action by the VESC before the Secretary could promulgate standards, the industry spokesman argues that it is desirable to bring both the states and the automobile industry into the standard-making process.

Obviously the states and the industry undoubtedly have certain expertise which should not be ignored. However, it is not necessary to adopt the industry proposal to accomplish this purpose. The Administration bill in its present form already provides for state and industry participation in section 105.

The industry proposal requires more than prior consultation by the Secretary with the states and industry; prior *action* by the automobile manufacturers and the VESC is required before the Secretary would be permitted to act.

To appreciate the possibilities for delay in the formulation of standards and introduction of safety devices which this scheme would permit, it is necessary to consider how the VESC operates. The Vehicle Equipment Safety Compact does not in itself contain standards for safety equipment. Rather, it sets up the procedures and machinery for interstate cooperation in the formulation of such standards. The compact establishes an interstate agency, the "Vehicle Equipment Safety Commission," consisting of one member designated by each party state. The Commission is empowered to recommend "rules and regulations or codes embodying performance requirements or restrictions" for items of motor vehicle equipment.

The compact outlines the steps for the Commission to follow in developing its recommendations. First, it must study the need for establishing or changing performance requirements for an item of safety equipment. The study must take into account research and test data available from any source. For this purpose, the Commission may "collect, correlate, analyze and evaluate" research and tests carried on by other agencies, public and private. But except for such "library-type" research, it is not authorized to carry on any research and testing of its own. It may contract for research and testing, but only if requested to do so by a state or governmental agency, and then only if the requesting agency provides the necessary funds. The Commission may not accept private funds for any purpose.

On the basis of its study of need, the interstate agency must publish a report. No less than sixty days later, it must hold one or more public hearings.

Finally, after these steps are completed, "and with due regard for standards recommended by appropriate professional and technical associations and agencies," the Commission may issue recommended rules, regulations or codes.

Party states are obligated to consider the rules, regulations or codes issued by the Commission, but they are *not* obligated to accept them. One of the two alternative methods of adoption requires affirmative action by the state legislature for the rule, regulation or code to take effect. The second alternative method is adoption by administrative action of a party state's motor vehicle agency. If a state chooses this alternative, its motor vehicle agency must adopt the rule, regulation or code within six months. The administrative agency may "decline to adopt" but only after public hearing, a specific finding that a variation from the Commission's recommendation "is necessary to the public safety," and a recital of the reasons on which the finding is based. Forty-four states and the District of Columbia are now members of the compact. In all but a few of the member states the enabling legislation provides that the legislature must pass upon standards proposed by the VESC.

We may only guess how long the adoption of motor vehicle safety standards by the VESC might take, since it has never yet adopted one, although Congress authorized the formation of interstate compacts in the field of traffic safety by passage of the Beamer resolution in 1958 and the VESC was organized in 1963. Surely, however, the study of need, publication of a report, holding of one or more hearings after an interval of at least sixty days, consideration of standards recommended by appropriate professional and technical associations and agencies, and finally formulation of a standard would consume a very considerable period of time. Moreover, since the proposed act would authorize the automobile manufacturers collectively to propose standards to the VESC and the compact requires the VESC to consider standards recommended by "appropriate professional and technical associations and agencies" before acting, the automobile manufacturers would be able to some extent to influence the timing on introduction of new safety devices.

The industry proposal would require the Secretary to allow such initial time (not exceeding two years from the date of enactment of this Act) as he considers reasonable for motor vehicle manufacturers to propose and for the VESC to adopt a

particular motor vehicle safety standard. Presumably, this means the Secretary must allow reasonable time for the procedure which has been outlined to be carried out. It may be somewhat optimistic to think that this procedure could be carried out even within the two-year maximum time limit which would be imposed. In any event the Secretary would have to allow reasonable time for the VESC to act on its own before he would even be permitted to propose an appropriate standard to the VESC for its consideration, a step which would be a prerequisite to promulgation of a federal standard by the Secretary. Although the industry proposal would provide that the Secretary could request the VESC to act upon his proposal within 180 days or such longer time as he might specify, it would appear that the VESC compact, the organization's legally binding constitutional document, would require it to adhere to the time-consuming procedure which has been outlined above. If the VESC had not previously recommended a standard on the particular subject, it would probably have to conduct the entire proceeding. Even if it had previously studied the particular subject, it would, at a minimum, have to publish a new or amended report, hold new hearings after allowing a sixty-day interval, and consider the opinions of appropriate professional and technical associations and agencies before acting on the Secretary's proposal. It seems extremely unlikely that such a procedure could be carried out within 180 days or anything approximating this period of time, and the proposed scheme appears to be not only unnecessary and undesirable but completely unworkable if one assumes that the Secretary would request the VESC to act within the 180-day period. The Secretary would no doubt be under heavy pressure to exercise the descretion which the industry bill would give him to allow a longer period within which the VESC could respond to his proposal.

In order for the Secretary to act under the industry proposal, however, not only would it be necessary to carry out these VESC proceedings, but the Secretary would then have to hold an APA section 4 proceeding as well. It is easy to envision it requiring five years or more before the Secretary is able to promulgate enforceable standards, with the automobile manufacturers themselves controlling the timing to a great extent.

Although Mr. Bugas stated before the House Committee on Interstate and Foreign Commerce that the amendments proposed by the industry "would involve no delay in the development and establishment of national safety standards," we believe it is obvious that this is far from the case.

In his remarks upon signing Proclamation 3718, declaring the week of May 15 as National Transportation Week, President Johnson stated that the Highway Safety Act of 1966 "will establish a program of strict safety standards for our automobiles." "The alternative to Federal standards," he said, "is unthinkable: 50 different sets of standards for 50 different States." The industry proposal, while it would not result in 50 different sets of standards, would permit differences among the States to delay for a very long period of time the introduction of federal standards.

One additional respect in which power might be taken from the Secretary and transferred to the VESC under the industry proposal warrants comment. The industry proposal, in section 102(d), would *require*, rather than authorize, the Secretary to establish as a motor vehicle safety standard any standard issued by the VESC which he found appropriate and necessary to accomplish the purposes of the Act. Since under that section the Secretary would be authorized to establish other standards only if any existing motor vehicle safety standard is inadequate, he would probably be barred from issuing any standard except the standard adopted by the VESC, unless he were willing to find that the VESC standard was inadequate. The Secretary might well believe that another standard was preferable to the standard recommended by the VESC, although he might not be prepared to determine that the standard recommended by the VESC was inadequate. In this situation he would be precluded from adopting the preferable standard.

The net effect of these disabilities of the proposed procedure is that in the name of desiring to allow the states to play a role, the hands of the Secretary would be severely tied. It is significant that the present industry proposal does not call for strengthening the VESC and opening it to federal participation.

At the hearings on S. 3005, when the industry proposed a joint voluntary action program with frequent consultations with Congress, the Secretary, the VESC and other governmental agencies, the industry spokesman, John S. Bugas, Vice President of Ford Motor Company, testified that the VESC presently has "a very small staff, inadequate in our opinion," (965) and "as it exists today, really cannot do this job." (1025) He indicated that the VESC has been concerned primarily with matters relating to driver safety, including driver licensing, registration, vehicle inspection, and law enforcement. In response to a question by Chairman MAGNUSON whether the VESC had ever discussed the designing of automobiles "in a way that might show an activity or interest in how a car is designed for safety reasons," he answered, "To my knowledge, they have not." (967) Mr. Bugas suggested that "one of the basic defects in VESC has been its inability, for whatever reason I don't know, its inability to finance its operations." (1027) "The State Commissioners," he stated, "frequently don't have money enough to go to a meeting." Senator HARTKE pointed out that even were the Federal government to help finance the VESC, since many State legislatures only meet every other year, it might be three years before there would be matching funds from many State organizations. (1028) These statements contrast sharply with the testimony of Mr. Bugas before the House Committee on Interstate and Foreign Commerce that: "The Vehicle Equipment Safety Commission is already authorized to issue vehicle safety standards for adoption by the states, *and no change in its present structure would be required.*"

The industry proposal would also amend section 105 of the bill, which authorizes the Secretary to cooperate with federal agencies, state or other public agencies, businesses, universities or other institutions in the planning or development of safety standards and inspection and testing methods, to specifically refer to the VESC as one of the state agencies which might be consulted and manufacturers of motor vehicles and motor vehicle equipment as businesses which might be consulted. These are logical parties with whom the Secretary might consult, and he would clearly have the power to cooperate with

these groups under the bill as presently written. Therefore, an amendment which would specify these two groups in particular seems unnecessary.

(2) *The Criteria for the Secretary's Action:* A second critical shortcoming in the industry proposal is that at least some of the criteria which it would require the Secretary to follow in establishing standards are overly restrictive, while others appear to be unnecessary and can serve best to breed pointless litigation. (Section 102(h).)

Among other things, the Secretary, in order to establish a standard, would be required to make findings of fact that it was "consistent with the continuation or adoption by motor vehicle manufacturers of efficient designing, engineering, and manufacturing practices, and with innovation, progressiveness, and customary model changes in the automotive industry." (Sec. 102(h)(2).) This criterion suggests that the introduction of safety devices, however urgent the need for them might be, could not be allowed to interfere with the customary cycle of the industry. It appears to be so interpreted by the industry. The Washington Post on May 13 reported an industry spokesman to have stated that under this provision the auto makers could not be expected to make "basic changes" such as an impact-absorbent front end for all models in a single year. The spokesman is reported to have said further that the industry is accustomed to basic model changes only every 3-4 years. In some instances, the urgency of the need for new safety devices may justify some disruption of the present cycle. The balancing of the urgency of the need for new devices against whatever disruption may result is a matter appropriately left to the Secretary. Moreover, while it might appear reasonable that a "standard should be consistent with * * * innovation [and] progressiveness," Mr. Bugas testified before the Senate Commerce Committee that the mere authorization of the Secretary to set standards would interfere with innovation and progressiveness. This suggests the type of litigation these broadly phrased standards might invite.

Accordingly, we oppose section 102(h)(2) in toto.

Another criterion, that of section 102(h)(1), also appears to be weighted against the desirability of action and contains general terms that may breed unwarranted challenges to the authority of the Secretary and to the effectiveness of the standards he sets. This provision requires that "the benefit to be derived by any * * * safety standard should be *clearly* warranted in the light of *all relevant factors.*" Conceivably, in a similar manner, the requirement of 102(h)(3) that costs be commensurate with "the benefit to be achieved" can raise serious problems as to evaluation of the benefits of safety. While we do not find particularly objectionable the criteria set forth in 102(h)(4) and 102(h)(5), the above problems presented by the articulation of these specific criteria lead us to prefer the approach taken by the Administration bill.

Under the Administration bill, the Secretary would have authority to establish "appropriate" Federal safety standards if he decides that there is a "need" for standards to achieve "adequate" motor vehicle safety to protect the public against "unreasonable" traffic risks. The Administration bill also requires a "performance" standard which is "practicable," "which meets the need for motor vehicle safety," and "which provides objective criteria on which the public may rely in assuring motor vehicle safety" (Sec. 101(b)). These criteria do not pose any problem of unconstitutional delegation of authority and have the virtue of avoiding the potentiality of unduly tying the Secretary's hands that the proposed criteria have. If, however, it is concluded that specific criteria are necessary they can be more appropriately written than those proposed by the industry.

(3) *The Unwarranted Extension of Antitrust Immunity:* A third danger posed by the industry proposed bill is that it might well create an unwarranted implied immunity from the antitrust laws.

The industry proposal authorizes and encourages automobile manufacturers (a) to collaborate in formulating standards; (b) to collaborate in designing, testing and producing vehicles

and equipment relating to such standard; and (c) to agree with each other to comply with standards proposed to the VESC or the Secretary before these standards are adopted.

In our judgment this statutory authorization and encouragement is unnecessary and unwise. The antitrust laws do not prevent the achievement of desirable progressiveness in the design and manufacture of safety equipment and vehicles. There is reason to predict that, in fact, competition among the very large and able companies that comprise the automobile industry can accelerate the development of safety devices. The collaboration authorized by the industry proposal, however, may well have a braking effect upon the development of safety devices.

For example, section 102(c)(3) would authorize the automobile manufacturers to agree to comply voluntarily with standards proposed to the Secretary or VESC before the government adopted standards. The danger in allowing the manufacturers to agree on minimum standards is that in practice these standards might well be regarded by the industry as absolute standards, which are not to be exceeded. Nor is it clear why agreements are necessary in this area. If, having proposed a standard, companies unilaterally determine that public opinion requires that they comply with or exceed that standard, antitrust liability is not a real threat.

Second, section 102(c) would authorize the manufacturers to work jointly "in designing, testing, and producing motor vehicles or motor vehicle equipment" for the purpose of developing, evaluating or complying with proposed standards. Some of this activity might well raise serious problems under the antitrust laws—such as joint production of *motor vehicles* to comply with proposed standards—in effect a partial merger in an industry already characterized by extreme concentration.

On the other hand, other activity covered by the provision, such as joint testing of new safety devices, would not ordinarily raise antitrust problems. The point is, however, that in an industry of so few participants, each of which is a large corporation with substantial resources, the valid need for

collaborative action, weighed against the possible adverse consequences of such collaboration, does not warrant any special protection from ordinary antitrust principles. Such principles are not unduly inhibiting; they do not threaten to impede progress in the development of safe cars. The *Hearr* doctrine affords ample room for consultation among the companies in invoking the governmental processes. Consultation with the Antitrust Division under the Business Review Procedure can assure the industry of the safety from antitrust prosecution of any collaborative effort.

Although the industry amendment would provide that the statute would not make lawful anything otherwise forbidden by the antitrust laws, such language is not an adequate safeguard. In a rule of reason situation a court could not help but be affected to some extent by the fact that the statute explicitly authorizes and encourages cooperation in the production of motor vehicles and equipment. Similarly, the court could not help but be impressed by the fact that the statute authorizes and encourages the members of the industry to agree to comply with the standards they are proposing even before these standards are adopted. If, as may well be the case, most of the antitrust problems raised by such collective action are not of a *per se* variety, the fact of legislative authorization and encouragement would undoubtedly affect a court's disposition of the anti-issue, despite any explicit disclaimer. At this point, it is not at all clear from either a competitive or a safety point of view that this type of collaborative effort is essential or wise.

(4) *The Inappropriate Standards of Judicial Review:* The industry proposal would make various amendments relating to judicial review of action taken by the Secretary and the procedure to be followed by the Secretary. These amendments are contained in proposed sections 102(i) and 103.

The industry proposal would amend section 103(a)(3) to substitute a new standard for judicial review of determinations made by the Secretary. Under the Administration bill findings of the Secretary as to facts, if supported by substantial evidence, would be conclusive. The industry proposal provides that findings of the Secretary with respect to questions of fact "shall

be sustained if based upon a fair evaluation of the entire record of the proceedings on which the Secretary based his order."

This new standard for judicial review represents an attempt to obtain a form of trial de novo in the Courts of Appeals, which would review the orders of the Secretary. Such review would be inappropriate and extremely burdensome on the Courts of Appeals, which are accustomed to reviewing determinations of fact under a "substantial evidence" test. The latter test is the one generally contained in statutes providing for court review of decisions or orders of regulatory agencies. See, *e.g.*, 15 U.S.C. 21(c) and 16 U.S.C. 825(1), relating to FTC and FPC orders. We see no reason why similar language should not be used here.

The industry proposal would also amend section 103(a)(3) to provide specific authorization to the reviewing court to stay the order of the Secretary pending final determination of the review proceedings, and would make jurisdiction in this respect, as well as to affirm or modify the Secretary's order, exclusive. This amendment seems undesirable in two respects. First, the specific authorization to the reviewing court to stay the Secretary's order is unnecessary, since such power, subject to appropriate limitations, is already given to the reviewing court under section 10(d) of the APA Act (5 U.S.C. 1009(d)). While the industry proposed statutory authorization is unnecessary, it might also have the undesirable effect of removing the limitations on the power to grant stays contained in section 10(d), since these limitations are not contained in the proposed statutory amendment. Second, by making the court's jurisdiction to stay the Secretary's order exclusive, this provision might take away the power which the Secretary otherwise would have under section 10(d) to postpone the effective date of action taken by him pending judicial review. It is probably desirable that the Secretary retain this power.

Section 103(a)(3) would also be amended by the industry proposal to provide that, "The Court shall not sustain the order of the Secretary if he failed to comply with *any* requirement imposed upon him by section 102." Section 10(e) of the APA Act provides that the reviewing court shall hold unlawful and

set aside agency action which is not in "observance of procedure required by law." The industry provision might invalidate action of the Secretary taken in substantial compliance with the specified procedure but with some minor deficiency not prejudicial to any party, whereas the provision of the APA Act would not. Accordingly, we oppose all the amendments which the industry proposal would make to section 103(a)(3).

The industry proposal would also provide in section 102(i) that the Secretary "shall base each such order upon a fair evaluation of the entire record which is before him pursuant to such section 4, and he shall set forth in such order findings of fact and conclusions on all relevant matters."

This amendment is undesirable. Because of its reference to a record and findings of fact, it may be intended to require the Secretary to conduct a formal *adjudicatory* proceeding, in accordance with sections 7 and 8 of the APA Act (5 U.S.C. 1006, 1007), rather than a *rule making* proceeding. The rule making proceeding apparently is contemplated by the Administration bill, since the Secretary is authorized to promulgate standards in accordance with section 4 of the APA Act (5 U.S.C. 1003), which prescribes the rule making proceeding. We prefer the flexibility of the Administration bill and suggest that the agency should retain the discretion, provided by section 4 of the APA Act, to determine whether to hold formal hearings with opportunity for cross-examination.

(5) *The Unwarranted Narrowing of Prohibitions:* The industry proposed amendments to sections 107, 108, 109 and 110 would severely restrict the acts which would be prohibited by the statute and reduce the penalties which might be imposed for violations. In a number of respects these changes may impair the efficiency of the proposed legislation.

(a) Under section 107(a)(1) of the Administration bill it would be unlawful for any person to manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States any motor vehicle or item of motor vehicle equipment unless it is in conformity with such standards as are prescribed by the Secretary. This would be a strict liability standard. The

industry proposal would only prohibit "knowingly and willfully" selling motor vehicles or equipment failing to meet federal standards. The standard of liability would be that of intentional torts.

Especially in view of the fact that the Administration bill does not in the version we have studied provide for criminal sanctions, an intentional tort standard seems far too permissive. Under the industry proposal manufacturers may not be found in violation of the act although they sold vehicles in reckless disregard of whether they complied with federal standards.

Unlike S. 3005, the Brake Fluid and Seat Belt Standards legislation, which only prohibit knowing and willful violations, are criminal statutes.

We have no objection to the certification device for protecting sellers who are assured by the manufacturer or importer of compliance with safety standards. Section 107(a)(3), b(1).

(b) The industry proposal would amend section 108(a) to place a $100,000 limitation on the penalty which could be imposed for any "related series of violations" of the Act. It would also delete the provision that a violation of section 107 or regulations issued thereunder shall constitute a separate violation with respect to each motor vehicle or item of motor vehicle equipment. We are opposed to these amendments. While some overall limitations may be desirable for a related series of violations, a limit of $100,000 would seem unreasonably low and would not act as a strong deterrent. Deletion of the provision defining what constitutes a separate violation of the act would leave this matter uncertain. Since the definition in the Administration bill appears to be a reasonable one, we oppose the deletion.

The industry proposal would also eliminate the seizure remedy provided in section 110(a). This is undoubtedly an extraordinary remedy to be used rarely. It may be desirable to provide such a remedy, both to have it available for an extraordinary situation and because it may act as a powerful deterrent to violation of the act. However, if adequate deterrents are otherwise provided, we see no strong need for the provision.

(c) A new section 107(c) would provide that nothing in the act shall be construed to require the Secretary to report for imposition of a civil penalty or institution of injunction proceedings minor violations of the act whenever the Secretary believes that the public interest will be adquately served by a suitable written notice or warning. No definition of what would constitute a "minor violation" is given. This provision seems unnecessary but if it is retained "minor violations" should be defined.

A new section 109(a) would provide that before any violation of the title is reported by the Secretary to the Attorney General or any United States Attorney for institution of an injunction proceeding, the person against whom the proceeding is contemplated shall be given notice and opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding, and, except where knowing and willful conduct is involved, such person shall also be given a reasonable opportunity to take corrective measures to achieve compliance. This would permit a period of delay before an injunction could be obtained, although swift action may be necessary in the interest of public safety.

The report submitted with the industry draft bill states that this provision is consistent with section 305 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335). However, that section calls for notice and hearing "before any violation * * * is reported * * * for institution of a *criminal* proceeding * * *." (Emphasis supplied.) The courts, moreover, have construed this provision to be inapplicable in a civil action for injunction. The report also cites section 9 of the Administrative Procedure Act, which offers interested parties a reasonable opportunity to take corrective measures to cure a violation before proceedings can be instituted. However, that section only applies to proceedings relating to revocations and suspensions of licenses.

We would generally not favor imposition of criminal penalties for violation of the Act. Were criminal sanctions created, the statute might have to be narrowed in the respects we have noted, and it would also undoubtedly receive a narrower judicial construction. There would also be some

difficulty in determining on which individuals criminal penalties should be imposed. Under the antitrust laws criminal sanctions are imposed upon individuals who have been participants in conspiratorial activity. The individuals responsible for noncompliance with safety standards, however, would not be as readily identifiable.

(6) *Other Limiting Amendments:* A number of other amendments proposed by industry would limit the power and discretion of the Secretary in various ways.

(a) The authority of the Secretary to establish standards would be limited to protecting the public against death and personal injury, whereas the Administration bill would also authorize him to formulate standards to protect against property damage. See sections 2, 101(a), 102(c)(2) and 104(a). In support of this limitation, the industry argues only that standards to protect against death or personal injury may be inconsistent with standards to protect against property damages. While it is true that these goals may be inconsistent in some circumstances, it is clear enough that priority should be given to protection against death and personal injury in such cases. Surely, the fact that the Secretary's ability to protect against property damages would be limited to some extent by the priority to be given to protecting life and person is no reason for denying him the power to protect against property damages where this can be accomplished consistent with other aims.

(b) Section 102(g) of the industry bill would require the Secretary to comply with the same procedure in amending or withdrawing a standard as in originally issuing one. The Secretary would first have to request the VESC to issue such an amendment or withdrawal. It seems particularly undesirable to limit the Secretary's power to withdraw a standard and to require such time-consuming proceedings, since experience may demonstrate a standard to be inadequate or, perhaps, even harmful.

(c) The industry proposal would eliminate from the present section 111(b) the requirement that manufacturers establish and maintain such records as the Secretary may reasonably require and also the provision that manufacturers

shall permit officers designated by the Secretary to inspect appropriate books, papers, records and documents. These provisions in the Administration bill are important means for the Secretary to ensure compliance with the Act and should not be eliminated.

(d) Section 113 of the Administration bill would require the Secretary to utilize the services, research, and testing facilities of other departments and agencies to the maximum extent practicable in order to avoid duplication in facilities and services. The industry proposal would add to this provision the requirement that the Secretary utilize the facilities of competent private agencies to the maximum extent practicable. It would be undesirable to limit the flexibility of the Secretary in this manner. He should be free to use private facilities to the extent he determines to be desirable. Moreover, in this connection we believe the Administration bill should clearly state that the Secretary has power to undertake research and development of experimental automobiles. In view of the highly concentrated structure of the industry this additional source of research and innovation would be valuable.

(e) Section 102(b) [102(f) of the industry bill] would be amended to require the Secretary to give due consideration to the criteria of Section 102(h), discussed at length in part (2) above, in determining the effective date for standards. Our comments earlier with respect to these criteria apply here as well.

(f) The industry proposes to add a new section 114 which would provide that in a civil action for infringement of a patent of the United States where the defendant establishes that the infringement was necessary for compliance with a federal motor vehicle safety standard, relief shall be confined to a reasonable royalty for making or using the patented invention. While it appears to be intended that this provision apply to all patents, "patents of the United States" might be interpreted to mean patents owned by the United States Government, in which case the provision would have very limited effect. Perhaps a different description of the patents covered should be chosen.

This provision can unnecessarily dull the incentive for any member of the industry or any independent part manufacturer to push research. The possibility of a new defense in infringement actions, which will be passed upon by a number of different courts and may lead to diverging conclusions as to the "necessity" for licensing, would increase patent litigation and would substantially qualify the expectation for rewards of prospective patent holders.

On the other hand, we recognize that there may be situations in which the advancement of safety requires that a patented invention be available generally on a reasonable royalty basis. We believe that if the Secretary should promulgate a standard that requires the use of a device for which there is but one patent holder, he should be empowered and required to provide for compulsory licensing of that patent on a reasonable royalty basis on the request of any prospective licensee. If alternative patented devices are available, he should be authorized in his discretion (upon his determination that availability at a reasonable cost of equipment needed for compliance with the safety standards so requires) to provide for compulsory licensing on a reasonable royalty basis of each such alternative patent on the request of any prospective licensee.

(g) Under section 102(b) of the Administration bill, if federal standards were in effect with respect to a motor vehicle or item of motor vehicle equipment, state standards with respect thereto would be null and void.

The industry section 102(f) would preempt state standards only if they differ from federal standards, consistent with the approach followed in the Tire Safety Bill.

Such an amendment seems desirable and may be necessary to enable the states to impose standards for used cars.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAMSEY CLARK
Deputy Attorney General

H. R. 12548

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 1966

MR. MACKAY introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend Public Law 660, Eighty-sixth Congress, to establish a National Traffic Safety Agency to provide national leadership to reduce traffic accident losses by means of intensive research and vigorous application of findings, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of July 14, 1960 (Public Law 660, Eighty-Sixth Congress), as amended, is amended to read as follows: That this Act may be cited as the National Traffic Safety Act.

"FINDINGS AND STATEMENT OF PURPOSE

"SEC. 2. (a) The Congress finds (1) that traffic accidents are the major cause of death of young people and, next to heart disease, cancer, and stroke, the principal cause of death and disability in the United States and are a menace to the public health and welfare; (2) that traffic accidents cause the American people direct financial losses each year in excess of $9,000,000,000 and seriously disrupt the economic life of the Nation and impede the orderly flow of commerce; (3) that many factors contribute to traffic accidents—such as the lack of uniform traffic highway signs and highway design, and the lack of adequate standards of safety incorporated into motor vehicles—and these factors may be minimized or eliminated by a national effort for traffic safety; (4) that the attainment of

maximum traffic safety requires vigorous Federal, State, and local action and a national agency will assist in obtaining such action; and (5) that a national program must be enacted by Congress in order to carry out its constitutional mandate to promote the general welfare and regulate commerce.

"(b) It is, therefore, the purpose of this Act to the extent of death, injury, and loss of property resulting from traffic accidents by providing the means for a counterattack on the problem through the establishment of a National Traffic Safety Agency headed by a highly qualified Administrator; the establishment of a National Traffic Safety Center which shall bring together public and private information and research; and through a national program for traffic safety which shall seek to achieve a uniform national traffic safety environment by means of the vigorous application of knowledge as to the principal causes of traffic accidents, deaths, and injuries.

* * *

"ESTABLISHMENT OF THE NATIONAL TRAFFIC SAFETY AGENCY AND THE OFFICE OF NATIONAL TRAFFIC SAFETY ADMINISTRATOR

"SEC. 4. (a) The Secretary shall carry out the provisions of this Act through a National Traffic Safety Agency (hereinafter referred to as the 'Agency'), which he shall establish in the Department of Commerce. The Agency shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate prescribed for level III of the Federal Executive Salary Schedule established by the Federal Executive Salary Act of 1964. The Administrator shall be a citizen of the United States, and shall be appointed with due regard for his fitness to discharge efficiently the powers and duties delegated to him pursuant to this Act. The Administrator shall have no pecuniary interest in or own any stock in or bonds of any enterprise involved in (1) manufacturing motor vehicles or

motor vehicle equipment, or (2) constructing highways, nor shall he engage in any other business, vocation, or employment. The Administrator shall perform such duties as are delegated to him by the Secretary.

"ESTABLISHMENT OF NATIONAL TRAFFIC SAFETY CENTER"

"(b) The Secretary shall establish, within the Agency, a National Traffic Safety Center (hereinafter referred to as the 'Center'). The Center shall consist of such library, laboratory, research and testing facilities as may be necessary to examine every facet of the traffic accident phenomenon in order to find the principal causes of traffic accidents and injury and to identify the most effective and practical methods for their prevention.

"ESTABLISHMENT OF NATIONAL TRAFFIC SAFETY PROGRAM—DUTIES OF THE SECRETARY OF COMMERCE

"SEC. 5. In order to carry out the purposes of this Act, the Secretary is authorized to—

"(1) conduct research and engineering studies, including, among others, studies of pertinent laws and regulations, motor vehicle safety design, driver training, accident reporting, highway construction, and highway signs, signals, and controls designed to improve traffic safety and establish national traffic safety standards;

"(2) collect, interpret, and publish data, statistics, and other information relating to traffic safety, establish and maintain library reference and public information services, and publish, on a regular basis, periodic consumer traffic safety bulletins for motorists;

"(3) promote and encourage the enactment of uniform State traffic and driver licensing laws and the uniform enforcement of such laws and encourage the several States

to enter into interstate compacts promoting highway traffic safety as authorized by the joint resolution of the Congress approved August 20, 1958, as amended;

"(4) develop and establish national traffic safety standards pertaining to the various elements in the total traffic environment and certify compliance with such standards pursuant to the provisions of this Act;

"(5) employ experts and consultants, or organizations thereof to assist him in carrying out his functions under this Act, as authorized by section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55) to compensate individuals so employed at rates not in excess of $100 per diem, including travel time, while away from their homes or regular places of business, travel expenses as authorized by section 5 of such Act (U.S.C. 73b-2) for persons in the Government service employed intermittently, while so employed;

"(6) negotiate contracts with, or make grants to educational institutions, scientific organizations, and industrial and engineering firms;

"(7) to the maximum extent practicable act in concert with the several States, local governments, nonpublic institutions and organizations;

"(8) issue necessary regulations and reports authorized by this Act; and

"(9) take such other actions as he determines will promote traffic safety in the United States.

"NATIONAL TRAFFIC SAFETY STANDARDS

"SEC. 6. (a) The Secretary shall establish, and publish in the Federal Register, not later than six months after the effective date of this Act, regulations prescribing national traffic safety standards.

"(b) The standards shall be effective on the date specified in the regulations.

"CERTIFICATION BY MOTOR VEHICLE MANUFACTURERS

"SEC. 7. (a) Any manufacturer of motor vehicles may certify for labeling or advertising purposes that new motor vehicles of such manufacturer meet United States traffic safety performance standards for new motor vehicles if such manufacturer submits proof adequate in the judgment of the Secretary that the new motor vehicles of such manufacturer comply with the relevant national traffic safety performance standards prescribed pursuant to this Act.

"(b) The Secretary shall by regulation prescribe the time and manner of submitting proof required for certification under this section.

"(c) The Secretary may prescribe an appropriate mark or symbol for use by such manufacturers who comply with the national traffic safety standards prescribed pursuant to this Act.

"GRANTS TO THE STATES FOR A UNIFORM TRAFFIC SAFETY PROGRAM

"SEC. 8. (a) The Secretary is authorized in accordance with the provisions of this section to make grants to the States to pay up to 30 per centum of the cost of the establishment or expansion of State programs for improving highway traffic safety.

* * *

"REGISTER OF REVOKED LICENSES

"SEC. 9. (a) The Secretary shall establish and maintain a register containing the name of each individual reported to him by a State, or political subdivision thereof as an individual with respect to whom such State or political subdivision has terminated or temporarily withdrawn an individual's license or privilege to operate a motor while because of (1) driving while under the influence of intoxicating liquor, or (2) conviction of a violation of a statute of a State, or ordinance of any political

subdivision thereof which resulted in the death of any person. Such register shall contain such other information as the Secretary may deem appropriate to carry out the purposes of this section.

"(b) The Secretary shall, at the request of any State, or political subdivision thereof, furnish such information as may be contained in the register established under this section with respect to any individual applicant for a motor vehicle operator's license or permit in such State or political subdivision.

"TRANSFER OF MOTOR VEHICLE SAFETY FUNCTIONS FROM THE GENERAL SERVICES ADMINISTRATION

SEC. 10. (a) The functions of the Administrator of General Services under the Act entitled 'An Act to require passenger-carrying motor vehicles purchased for use by the Federal Government to meet certain passenger safety standards', approved August 30, 1964, are transferred to the Secretary of Commerce.

"(b) All personnel, property, records, obligations, commitments, and unexpended balances of appropriations, allocations, and other funds, which the Director of the Bureau of the Budget determines are used primarily with respect to any function transferred under the provisions of this section, are transferred to the Department of Commerce.

"(c) All laws relating to any agency or function transferred under this section shall, insofar as such laws are applicable, remain in full force and effect. Any transfer of personnel pursuant to this section shall be without change in classification or compensation, except that this requirement shall not operate to prevent the adjustment of classification or compensation to conform to the duties to which such transferred personnel may be assigned. All orders, rules, regulations, permits, or other privileges made, issued or granted by any office or agency in connection with a function transferred by this section, and in effect at the time of the transfer, shall continue in effect to the extent as if such transfer had not occurred, until modified,

superseded, or repealed. No suit, action, or other proceeding lawfully commenced by or against any agency or officer of the United States acting in his official capacity shall by reason of any transfer made pursuant to this section except that the court, on motion or supplemental petition filed at any time within twelve months after such transfer takes effect showing a necessity for a survival of such suit, action or other proceeding to obtain a settlement of the question involved, may allow the same to be maintained by or as the appropriate agency or officer of the United States.

"(d) The provisions of this section shall be effective after ninety days following the date of its enactment.

REPORTS AND RECOMMENDATIONS

SEC. 11. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress at least once in each fiscal year a comprehensive report on the administration of this Act.

(b) In the annual report to be submitted by June 30, 1967, the Secretary shall make such recommendations for additional legislation as he deems necessary to promote cooperation among the several States in the improvement of traffic safety and to strengthen the national traffic safety program.

* * *

H.R. 13228

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 1966

MR. STAGGERS introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To provide for a coordinated national safety program and establishment of safety standards for motor vehicles in interstate commerce to reduce traffic accidents and the deaths, injuries, and property damage which occur in such accidents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Traffic Safety Act of 1966".

SEC. 2. The Congress hereby declares that the purpose of this Act is to reduce traffic accidents and the deaths, injuries, and property damage resulting from traffic accidents. To this end, the Secretary of Transportation shall have authority to establish motor vehicle safety standards for motor vehicles and equipment in interstate commerce; to undertake and support necessary safety research and development; and to encourage and provide financial assistance in developing State traffic safety programs under effective standards for drivers, motor vehicles, postaccident care and the traffic environment, including highways.

TITLE I—MOTOR VEHICLE SAFETY STANDARDS

DEFINITIONS

SEC. 101. As used in this title—

(a) "Motor vehicle safety" means the performance of motor vehicles or motor vehicle equipment in such a manner

that the public is protected against unreasonable risk of accidents occurring as a result of the design of motor vehicles and is also protected against unreasonable risk of death or injury or property damage in the event accidents do occur.

(b) "Motor vehicle safety standard" means a minimum standard for motor vehicle performance, or motor vehicle equipment performance, which is practicable, which meets the need for motor vehicle safety and which provides objective criteria on which the public may rely in assuring motor vehicle safety.

(c) "Motor vehicle" means any vehicle driven or drawn by mechanical or other power, primarily for use on the public roads, streets and highways, other than (1) a vehicle subject to safety regulations under part II of the Interstate Commerce Act, as amended (chapter 8, title 49 of the United States Code), or under the Transportation of Explosives Act as amended (sections 831-835 of chapter 39, title 18 of the United States Code), and (2) a vehicle or car operated exclusively on a rail or rails.

(d) "Motor vehicle equipment" means any system, part or component of a motor vehicle as originally manufactured or any similar part or component manufactured or sold for replacement or improvement of such system, part or component or as an accessory or addition to the motor vehicle.

(e) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(f) "Interstate commerce" means commerce between any place in a State and any place in another State, or between places in the same State through another State.

(g) "Secretary" means Secretary of Transportation.

FEDERAL MOTOR VEHICLE SAFETY STANDARDS

SEC. 102. (a) The Secretary shall, from time to time, review existing public and private motor vehicle safety standards and the degree of effective compliance existing with respect to such standards. If, at any time after two years from

the date of the enactment of this Act he determines that there is a need for a new or revised motor vehicle safety standard and that—

(1) no motor vehicle safety standard exists;

(2) any existing motor vehicle safety standard is inadequate to protect the public against unreasonable risk of accidents or of death, injury, or property damage resulting therefrom, as defined in section 101 (a):

(3) any existing motor vehicle safety standard is not based upon all measurements of performance necessary to the achievement of motor vehicle safety; or

(4) the degree of effective compliance with respect to any existing motor vehicle safety standard is insufficient to achieve adequate motor vehicle safety; then the Secretary is authorized to establish and issue by order in accordance with section 4 of the Administrative Procedure Act, appropriate Federal motor vehicle safety standards for motor vehicles or motor vehicle equipment.

(b) A Federal motor vehicle safety standard issued by order pursuant to subsection (a) shall become effective on the date specified by the Secretary in that order, which shall be no sooner than one hundred and eighty days nor later than two years from the date on which the standard is issued. No State or local government law, regulation, or ordinance to establish a safety standard for a motor vehicle or item of motor vehicle equipment in interstate commerce if a Federal motor vehicle safety standard issued in conformance with the provisions of this title is in effect with respect to that motor vehicle or item of motor vehicle equipment; and any such law, regulation, or ordinance purporting to establish such safety standards and providing a penalty or punishment for an act of noncompliance therewith shall be null, void, and of no effect. However, nothing herein shall be construed to prevent a State or local government or the Federal Government from establishing requirements more stringent than a Federal motor vehicle safety standard for the exclusive purpose of its own procurement.

(c) The Secretary, from time to time, and subject to section 4 of the Administrative Procedure Act, may by order amend or withdraw Federal motor vehicle safety standards issued under this section. Amendments or withdrawals shall be effective on the date specified by the Secretary in that order, which shall be no sooner than one hundred and eighty days nor later than one year from the date on which the amendment or withdrawal is issued, unless the Secretary finds, publishing his reasons therefor, that an earlier or later date is in the public interest.

JUDICIAL REVIEW OF ORDERS

SEC. 103. (a)(1) In a case of actual controversy as to the validity of any order under section 102, any person who will be adversely affected by such order when it is effective may at any time prior to the forty-fifth day after such order is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall place in the court the record of the proceedings on which the Secretary based his order, as provided in section 2112 of Title 28 of the United States Code.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts, or to new findings, by reason of the additional evidence and he shall file such modified or new findings, and recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(5) Any action instituted under this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(6) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(b) A certified copy of the transcript of the record and proceedings under this section shall be furnished by the Secretary to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, libel for condemnation, exclusion of imports, or other proceeding arising under or in respect to this title, irrespective of whether proceedings with respect to the order have previously been instituted or become final under subsection (a).

RESEARCH, TESTING, AND DEVELOPMENT

SEC. 104. The Secretary, in cooperation with other departments and agencies as provided in section 113, is authorized to undertake appropriate research, testing, and development for motor vehicle safety and motor vehicle safety standards to accomplish the purposes of this title and, in exercising this authority, may perform the following functions:

(a) gathering or collecting existing data from any source for the purpose of determining the relationship between motor vehicle or motor vehicle equipment per-

formance characteristics and (1) accidents involving motor vehicles, and (2) the occurrence of death, personal injury or property damage resulting from such accidents;

(b) contracting for the fabrication of or directly purchasing, notwithstanding any other provision of law, motor vehicles or motor vehicle equipment for research and testing purposes, and the testing of motor vehicles and motor vehicle equipment to accomplish the purposes of this title, even though such tests may damage or destroy the vehicles or equipment being tested;

(c) selling or otherwise disposing of motor vehicles or motor vehicle equipment tested pursuant to subsection (b), notwithstanding any other provision of law and reimbursing the proceeds of such sale or disposal into the appropriation or fund current and available for the purpose of carrying out this title: *Provided,* That motor vehicles and motor vehicle equipment which have been rendered irreparably unsafe for use on the highways, by testing pursuant to subsection (b), shall be sold or disposed of in a manner insuring that they shall not be used on the highways or on vehicles for use on the highways;

(d) performing or having perfomed all research, development and information gathering and disseminating activities necessary and appropriate for motor vehicle safety and motor vehicle safety standards, and purchasing or acquiring equipment and facilities related thereto, or fabricating needed motor vehicle equipment to accomplish the purposes of this title, including—

(1) relating motor vehicle and motor vehicle equipment performance characteristics to motor vehicle safety;

(2) determining the effects of wear and use of motor vehicles and motor vehicle equipment upon motor vehicle safety;

(3) evaluating and developing methods and equipment for testing, inspecting and determining safety of motor vehicles and motor vehicle equipment;

(4) evaluating and developing methods and equipment for determining adequacy of motor vehicle safety standards, and compliance of motor vehicles with motor vehicle safety standards; and

(5) developing appropriate motor vehicle safety standards.

(e) awarding grants to State or interstate agencies and nonprofit institutions for performance of activities authorized in this section.

COOPERATION

SEC. 105. In addition to such advisory authority as the Secretary otherwise may exercise, he is authorized to advise, assist, cooperate with, or enter into cooperative agreements with and receive and expend funds made available thereunder by Federal agencies, State or other public agencies, businesses, universities or other institutions in the planning or development of:

(a) motor vehicle safety standards;

(b) method for inspecting or testing under motor vehicle safety standards;

(c) motor vehicle and motor vehicle equipment methods and test equipment.

TRAINING

SEC. 106. (a) The Secretary is authorized to train, or establish training programs for, personnel of Federal agencies, State or other public agencies or institutions, private firms and private institutions by grants to or contracts with such agencies, firms or institutions for the purpose of achieving motor vehicle safety as provided in this title. He may receive and expend funds made available under a cooperative agreement or utilize motor vehicles or motor vehicle equipment furnished thereunder for training purposes.

* * *

PROHIBITED ACTS

SEC. 107. (a) No person shall—

(1) manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or item of motor vehicle equipment manufactured on or after the date any applicable Federal motor vehicle safety standard takes effect under this title unless it is in conformity with such standard as prescribed or amended by the Secretary pursuant to section 102 except as provided in subsection (b) of this section: or

(2) fail or refuse access to or copying of records or fail to make reports or provide information, as required under section 111(b).

(b)(1) Paragraph (1) of subsection (a) shall not apply to the sale, the offer for sale, or the introduction or delivery for introduction in interstate commerce of any motor vehicle or motor vehicle equipment after the first purchase of it in good faith for purposes other than resale.

(2) A motor vehicle or item of motor vehicle equipment offered for importation in violation of paragraph (1) or subsection (a) shall be refused admission into the United States under joint regulations issued by the Secretary of the Treasury and the Secretary; except that the Secretary of the Treasury and the Secretary may, by such regulations provide for authorizing the importation of such motor vehicle or item of motor vehicle equipment into the United States upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or item of motor vehicle equipment will be brought into conformity with any applicable Federal motor vehicle safety standard prescribed under this title, or will be exported or abandoned to the United States.

(3) The Secretary of the Treasury and the Secretary may, by joint regulations, permit the temporary importation of any motor vehicle or item of motor vehicle equipment, after the first purchase of it in good faith for purposes other than resale, notwithstanding paragraph (2) of this subsection.

(4) Paragraph (1) of subsection (a) shall not apply in the case of a motor vehicle or item of motor vehicle equipment intended solely for export, and so labeled or tagged on the vehicle or item itself and on the outside of the container, if any.

CIVIL PENALTY

SEC. 108. (a) Whoever violates any provision of section 107, or any regulation issued thereunder, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. Such violation of a provision of section 107, or regulations issued thereunder, shall constitute a separate violation with respect to each motor vehicle or item of motor vehicle equipment or with respect to each failure or refusal to allow or perform an act required thereby.

(b) Any such civil penalty may be compromised by the Secretary. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

JURISDICTION; INJUNCTION

SEC. 109. (a) The United States district courts and the United States courts of the Commonwealth of Puerto Rico and the territories and possessions shall have jurisdiction, for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this title upon petition by the appropriate United States Attorney or the Attorney General on behalf of the United States.

(b) In any proceeding for criminal contempt for violation of an order, injunction or restraining order issued under this section, which violation also constitutes a violation of this title, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the manner of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(c) In all libel or injunction proceedings for the enforcement or to restrain violations of this title, subpenas for witnesses who are required to attend a court of the United States in any district may run into any other district in any such proceeding.

SEIZURE

SEC. 110. (a) Any motor vehicle or motor vehicle equipment that has been manufactured or introduced into commerce in violation of section 107 shall be liable to be proceeded against by the United States while in interstate commerce, or while held for any sale after shipment in interstate commerce until the occurrence of the first purchase of it in good faith for purposes other than resale, or libel of information and condemned in any district court of the United States and in any United States court for the Commonwealth of Puerto Rico or the territories and possessions.

(b) Such motor vehicle or item of motor vehicle equipment shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libels for condemnation proceedings under this section, involving the same claimant, are pending in two or more jurisdictions, such pending proceedings, upon application of the United States or the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the applicant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the United States or the claimant may apply to the court of any such jurisdiction, and such court (after giving the other party, the claimant, or the United States attorney for such district, reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such

pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any order the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the case covered thereby.

(c) Any motor vehicle or item of motor vehicle equipment condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the evidence may, in accordance with the provisions of this section, dictate and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States, but such motor vehicle or item of motor vehicle equipment shall not be sold under such decree contrary to the provisions of this Act or the laws of the jurisdiction in which sold: *Provided,* That, after entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such motor vehicle or item of motor vehicle equipment shall not be sold or disposed of contrary to the provisions of this Act or the laws of any State or territory in which sold, the court may by order direct that such motor vehicle or item of motor vehicle equipment be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this Act under the supervision of an officer or employee duly designated by the Secretary, and the expenses of such supervision shall be paid by the person obtaining release of the motor vehicle or item of motor vehicle equipment under bond.

(d) When a decree of condemnation is entered against the motor vehicle or item of motor vehicle equipment, court costs and fees, and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the motor vehicle or item of motor vehicle equipment.

(e) In the case of removal for trial of any case provided by subsection (b) of this section—

(1) the clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction;

(2) the court to which such case is removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

INSPECTION AND TESTING FOR COMPLIANCE; RECORDS AND REPORTS

SEC. 111. (a) The Secretary is authorized to conduct such testing and inspection as he deems necessary to aid in the enforcement of Federal vehicle safety standards issued and in effect under this title and shall furnish the Attorney General and, when appropriated, the Secretary of the Treasury any information obtained and test results indicating noncompliance with such standards, for appropriate enforcement or customs action.

(b) Every manufacturer of motor vehicles and motor vehicle equipment shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this title and motor vehicle safety standards prescribed pursuant to this title and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee to inspect appropriate books, papers, records, and documents.

(c) All information reported to or otherwise obtained by the Secretary or his representative pursuant to subsection (b) which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act.

BRAKE FLUID AND SEAT BELT STANDARDS

SEC. 112. (a) Public Law 87-637 (Act of September 5, 1962, 76 Stat. 437, 15 U.S.C. 1301-1303), and Public Law 88-201 (Act of December 13, 1963, 77 Stat. 361, 15 U.S.C. 1321-1323) are hereby repealed. Any rights or liabilities now existing under Public Laws 87-637 and 88-201 shall not be affected by this repeal.

(b) Standards issued under the laws repealed in this section shall continue in full effect and may be amended as if they had been effectively issued pursuant to section 102. Such standards shall, after enactment of this Act, be subject to the enforcement and all other provisions of this title.

AVOIDANCE OF DUPLICATION

SEC. 113. The Secretary, in exercising the authority under this Act, shall utilize the services, research and existing facilities of other departments and agencies to the maximum extent practicable in order to avoid duplication of facilities and services operated by the department agencies.

REGULATIONS

SEC. 114. The Secretary is authorized to issue, amend and withdraw such rules and regulations as he may deem necessary or appropriate to carrying out the provisions of this Act.

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TITLE II—TRAFFIC ACCIDENT AND INJURY RESEARCH AND TEST FACILITY

SEC. 201. The Secretary of Transportation is hereby authorized, acting independently or in cooperation with other Federal departments or agencies, to plan, design, construct, maintain, and operate a facility or facilities, within the District of Columbia or elsewhere, in which to conduct so much of the research, development, and testing provided for by this Act, and other research, development, and testing in traffic safety authorized by law, as he may deem appropriate and necessary.

"§403. Highway safety research and development

"For the purpose of strengthening the highway safety program of the Federal Government, the Secretary is authorized to expand the highway safety research and development activities under section 307(a) of title 23, United States Code, to cover all aspects of highway safety which shall include, but not be limited to, highway safety systems research and development relating to vehicle, highway, or driver characteristics, accident investigations, communications, emergency medical care, and transportation of the injured. The Secretary may use the funds appropriated for any fiscal year for the purposes of this section, independently or in cooperation with other Federal departments or agencies, for grants to State or local agencies, institutions, individuals for training or education of highway safety personnel, research fellowships in highway safety, development of improved accident investigation procedures, community emergency medical service plans, demonstration projects or for related activities which are deemed by the Secretary to be necessary to carry out the purposes of this section.

"§404. National Driver Register service

"(a) The Secretary shall establish and maintain a register containing the name of each individual reported to him by a State, or political subdivision thereof, as an individual with respect to whom such State or political subdivision has denied, terminated, or temporarily withdrawn (except a withdrawal for less than six months based on habitual violation) an individual's license or privilege to operate a motor vehicle. Such register shall also contain such other information as the Secretary may deem appropriate to carry out the purposes of this section.

"(b) The Secretary shall, at the request of any State, or political subdivision thereof, or at the request of any Federal department or agency, furnish such information as may be contained in the register established under subsection (a) with respect to any individual applicant for a motor vehicle operator's license or permit.

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